



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2004-23 Issuing Office: CECW-CE Issued: 28 Dec 2004 Expires: 31 Dec 2005

Subject: Architect-Engineer Responsibility Management Program (AERMP)

Applicability: Information

1. We have received and analyzed the FY04 AERMP reports from all MSCs and Centers, which are required by Chapter 7 of EP 715-1-7, Architect-Engineer Contracting. The following observations are made:

a. The total amount of A-E liability settlements received in FY04 was \$2,180,000. This is a significant increase from the previous ten-year average of \$1,316,000, primarily due to one single settlement of \$1,510,000 by New York District.

b. Fifteen cases were settled in FY04. The negotiated settlements were about 66% of the original computed damages, which is well above the historical ten-year average of about 44%.

c. Investigation and recovery (I&R) costs were reported for eleven of the settled cases. For those cases, about 23 cents in I&R costs were spent for each dollar of A-E settlement. Since FY97 when we started collecting I&R cost data, about 13 cents in I&R costs were spent for each dollar of A-E settlement. Reasonable I&R costs are part of the assessable damages and must be tracked and reported for all A-E liability cases.

d. The backlog of liability cases (34) carried over into FY05 is about the same as carried over into FY04 (36), although the damages are much less (\$10,627,000 vs. \$21,924,00). We have an important responsibility to our customers to pursue A-E liability cases in a timely manner.

2. Based on the FY04 reports, MSCs and districts seem to be very aware of the requirements of the AERMP and have effective programs in place. The FY04 MSC AERMP reports are due to CECW-CE by 30 November 2005. Districts are required to report quarterly to their MSC on the progress of each case. The following points should be considered when reporting:

a. All design deficiencies are not A-E liability cases. It is only a case if the A-E firm is liable for the damages and we decide to pursue recovery. See EP 715-1-7, para. 7-7.h and the flowchart at Appendix BB.

b. The reports must include I&R costs, which are part of the total assessable damages. It is also important to track I&R costs as a measure of the effectiveness of the AERMP in each command.

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c. The value of any work-in-kind (i.e. A-E services) performed by an A-E firm as "payment" for a liability claim must also be reported. (Of course, this does not include the effort for an A-E to correct its own mistakes.) Also, an A-E firm cannot perform the construction required to correct a design deficiency. See EP 715-1-7, para. 7-7.c.

d. If an A-E settlement is made without the need for a letter of intent, a case report is still required and the settlement amount included in the annual report. See footnote 6 on page 7-8 of EP 715-1-7.

3. HQUSACE point of contact for the AERMP is now Harry Goradia, CECW-CE-D, 202-761-4736.

A handwritten signature in black ink, appearing to read 'D. Basham', with a stylized, flowing script.

DONALD L. BASHAM, P.E.
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Directorate of Civil Works